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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT EXAMINING OPERATION

Applicants : Bruce S. Marks
Serial No. : 09/778,325
Filed : February 7, 2001
For : METALLIZABLE WHITE OPAQUE
FILMS, METALLIZED FILMS MADE
THEREFROM AND LABELS MADE
FROM THE METALLIZED FILMS
Confirmation No. : 1774
Examiner : Kimberly T. Nguyen

#12

RESPONSE UNDER 37 CFR 1.111 AND 1.116

Honorable Commissioner for Patents
Washington, D.C. 20231

Sir:

This is responsive to the Final Office Action dated February 24, 2003.

The Invention

The present invention relates to metallizable white opaque films, metallized films made therefrom and labels made from the metallized films. More specifically, this invention relates to metallized white opaque films which are specifically structured to receive a metallized layer on one outer skin surface and an aqueous cold glue adhesive on the opposed surface.

Claim 1, which is the only independent claim in this application, relates to a multilayer, metallizable, white opaque film that includes at least three layers; namely, an

internal core layer and opposed outer skin layers that are thinner than the core layer. Claim 1 clearly specifies that one of the outer skin layers, which is a non-voided layer, has a surface that is oxidatively treated to receive a metal layer thereon. Claim 1 further specifies that the opposed outer skin layer which is the layer that is constructed and designed to receive an aqueous cold glue adhesive, must be a voided layer. Specifically, claim 1 specifies that this outer skin layer for receiving an aqueous cold glue adhesive includes "a sufficient amount of a void-created additive to provide sufficient porosity for the absorption of an aqueous cold glue adhesive of the type employed to adhere a label to a container."

Thus, in summary, the multilayer, metallizable, white opaque film claimed herein requires that one outer skin layer have a sufficient degree of porosity for receiving an aqueous cold glue adhesive, and that the opposed outer skin layer, which is designed to receive a metal layer thereon, is a non-voided layer that is oxidatively treated to receive the metal layer thereon.

The Rejections

The Examiner finally rejected claims 1 - 15, 17 and 19 "under 35 U.S.C. 103(a) as being unpatentable over Alder et al., U.S. Pat. No. 5,773,136."

The Examiner rejected claim 20 "under 35 U.S.C. 103(a) as being unpatentable over Alder et al., U.S. Pat. No. 5,773,136 in view of Murschall et al, U.S. Pat. No. 5,900,294."

Thus, the rejection of all of the claims, including sole independent claim 1, relies principally upon the teachings in the Alder et al. '136 patent.

The Alder et al. '136 patent discloses a structure that is totally unrelated to the invention claimed herein, and in particular, to the invention specified in independent claim

1. Since claim 1 is the only independent claim presented for consideration herein, the rejection will be discussed first in connection with this claim.

The Alder et al. invention is, at a minimum, a three-layer structure including a relatively thick base layer, which, from a thickness standpoint, is analogous to a core layer of the type employed in the present invention, a non-voided intermediate layer and a top, heat-sealable layer.

It is critical to the Alder et al. construction that the intermediate layer be non-voided and be designed to actually rupture when the film is intended to be removed from a substrate to which it is adhered.

Thus, it is critical to the Alder et al. structure that the heat-sealable layer, which in fact is the outer skin layer of the film, be adhered to a non-voided intermediate layer.

The teachings in Alder et al. are totally unrelated to the present invention for at least two reasons. *not use*

First, there is absolutely no disclosure or suggestion in Alder et al. that the film should in any way be designed to accommodate an aqueous cold glue adhesive. ^{pp} In distinction, claim 1 clearly specifies that an outer skin layer opposed to the layer intended to receive a metal layer includes "a void-creating additive to provide sufficient porosity for the absorption of an aqueous cold glue adhesive of the type employed to adhere a label to a container."

Second, Alder et al. includes absolutely no teaching of employing a void-creating additive of any type in the intermediate layer that is intended to receive the heat-sealable layer. Clearly, Alder et al. does not remotely suggest the selection of any amount of a void-creating additive to modify the intermediate layer in a manner that would permit it to receive

adhering surface

an aqueous cold glue adhesive. To the contrary, Alder et al. actually teaches away from modifying the intermediate layer by voiding it, by specifically teaching that this intermediate layer is a non-voided layer. (b3)

Applicant respectfully disagrees with the Examiner's position that the non-voided intermediate layer is a "non-voided skin layer." In fact, the intermediate layer is not a skin layer at all, but rather is bound on one side by a heat-sealable layer and on its opposite side by a relatively thick base layer. Thus, the heat-sealable layer in Alder et al. is an outer skin layer. There is absolutely no suggestion of modifying the heat-sealable layer in a manner to permit it to receive an aqueous cold glue adhesive. In fact, why would Alder et al. want to provide such a teaching, since they rely upon the heat-sealable layer to provide the attachment of the film to a substrate, not upon a separate and different adhesive material.

Alder et al. do teach an embodiment wherein a metal layer can be applied to the outer layer that is remote from the heat-sealable layer. However, as noted above, such a structure still would not suggest a multilayer-metallizable, white opaque film wherein the skin layer on the side opposite the metal layer includes "a sufficient amount of a void-creating additive to provide sufficient porosity for the absorption of an aqueous cold glue adhesive of the type employed to adhere a label to a container."

In summary, what Alder et al. teaches a person skilled in the art is that the adhesive component of the film should be a heat-sealable film layer that is adhered to a non-voided intermediate layer. This is in clear distinction to applicant's claimed invention, which requires an outer skin layer of the film to be provided with a void-creating additive to create

porosity for absorption of an aqueous cold glue adhesive. This latter teaching, or one even similar to it, is completely missing from the Alder et al. patent.

Applicant respectfully disagrees with the Examiner's position that it would be obvious to select an amount of calcium carbonate to provide the desired porosity for receiving an aqueous cold glue adhesive, as specified in claim 1, or to include the specific amounts of calcium carbonate as is specified in a number of the dependent claims (e.g., claims 1, 4 and 5.) Specifically, Alder et al. is not at all concerned with providing a skin layer that is constructed to receive an aqueous cold glue adhesive as is specified in claim 1 and the claims dependent therefrom. Thus, there is absolutely no basis or support for the Examiner's position that it would be obvious to construct the intermediate skin layer to include any void creating additive whatsoever, let alone the specific amounts required and/or specifically set forth in claim 1 and the claims dependent therefrom. In fact, to the contrary, Alder et al. makes it clear that the intermediate layer intended to receive the heat-sealable skin layer is required to be a non-voided layer.

In view of the above remarks, Applicant submits that claim 1 sets forth patentably novel subject matter, and therefore an indication to that effect is respectfully requested.

Claim 2 is dependent upon claim 1 and specifies that the opposed outer skin layer, which is the layer intended to receive the aqueous cold glue adhesive, includes calcium carbonate as the void-creating additive in an amount from about 20% to about 60% by weight, based on the weight of the opposed outer layer. This feature in combination with the features specified in claim 1 is neither shown nor suggested in the prior art of record and therefore claim 2 is submitted to be patentable thereover. In fact, Alder et al. does not remotely suggest including any desired percentage of calcium carbonate in the

intermediate layer for receiving any adhesive layer, let alone for receiving an aqueous cold glue adhesive. In fact, the Alder et al. patent does not suggest any system which employs an aqueous adhesive system (the heat-sealable layer is a polymeric film layer forming part of an extruded, multilayer film structure, not an aqueous cold glue adhesive).

Claims 3 - 5 are each dependent upon claim 1, and each specifies a preferred percentage by weight of calcium carbonate employed in the outer layer that is designed to receive an aqueous cold glue adhesive. These features in combination with the features specified in claim 1 are neither shown nor suggested in the prior art of record and therefore claims 3 - 5 are submitted to be patentable thereover.

Claims 6 - 10 are dependent, respectively, on claims 1 - 5, and each requires the additional step of oxidatively treating the opposed outer skin layer to enhance adherence of the cold glue adhesive to the opposed outer skin layer.

The features specified in these latter dependent claims in combination with the features of parent claim 1 are neither shown nor suggested in the prior art of record and therefore claims 6 - 10 are submitted to be patentable thereover. Moreover, there is absolutely no teaching in Alder et al. of oxidatively treating any surface to enhance adherence of any cold glue adhesive layer. In Alder et al. one of the outer layers is a heat-sealable layer, for which there is absolutely no reason to provide an oxidative treatment. The opposed layer, although possibly being oxidatively treated, would have to be designed to receive a metal layer thereon in order to meet that specific limitation of claim 1. However, in such a structure, there still would be absolutely no teaching in Alder et al. of oxidatively treating the heat-sealable layer for any purpose whatsoever.

Moreover, even if one were to consider the intermediate layer of Alder et al. as being an outer skin layer as specified in claim 1, which it is not, that intermediate layer is required to be a non-voided layer. Clearly, there is no suggestion of adding a void-creating additive to the intermediate layer to provide sufficient porosity for absorbing an aqueous cold glue adhesive thereon. Clearly such a teachings doesn't exist because the intermediate layer is not intended to receive an aqueous cold glue adhesive, but rather is intended, and indeed required, to receive a heat-sealable film layer thereon.

Claim 11 is dependent upon claim 1 and specifies that the internal core is free of void-creating additives. This feature in combination with the features of parent claim 1 is neither shown nor suggested in the prior art of record and therefore claim 11 is submitted to be patentable thereover.

Claim 12 is dependent upon claim 1 and claim 13 is dependent upon claim 6; both claims specifying that the outer layer that is treated to receive a metal layer thereon has a thickness of approximately 20 gauge or less, that the core layer has a thickness of approximately 200 gauge and that the opposed outer skin layer has a thickness of about 15 to 25 gauge. These features in combination with the features of parent claims 1 and 6, respectively, are neither shown nor suggested in the prior art of record and therefore claims 12 and 13 are submitted to be patentable thereover.

Claims 14 and 15 are dependent upon claims 1 and 6, respectively, and each specifies that the film is a biaxially oriented polyolefin film. This feature in combination with the features of parent claims 1 and 6, respectively, is neither shown nor suggested in the prior art of record and therefore claims 14 and 15 are submitted to be patentable thereover.

Claims 16 and 18 have been cancelled.

Claims 17 and 19 are dependent upon claims 1 and 6, respectively, and each specifies that the film includes a metal layer on the outer surface of the outer skin layer remote from the voided skin layer intended to receive the aqueous cold glue adhesive. This feature in combination with the features of parent claims 1 and 6, respectively, is neither shown nor suggested in the prior art of record and therefore claims 17 and 19 are submitted to be patentable thereover.

Claim 20 is dependent upon claim 17 and specifically claims a label cut from the multilayer film of claim 17, with the label intended to be part of a stack of labels for removal from the stack to be applied to a bottle or other suitable container with the metal layer facing outwardly on the bottle or other suitable container. Applicant submits that the features of claim 20 are neither shown nor suggested in the prior art of record. Specifically, neither Alder et al. nor Murschall remotely suggests a label of the type intended to be part of a stack of labels for application to a bottle or other suitable container through an aqueous cold glue adhesive system.

Applicant submits that the features of claim 20 in combination with the features of parent claim 17 are neither shown nor suggested in the prior art of record and therefore claim 20 is submitted to be patentable thereover.

In view of the above remarks, Applicant respectfully submits that all of the claims in this application are patentably novel, and respectfully requests an indication to that effect.

Respectfully submitted,

CAESAR, RIVISE, BERNSTEIN,
COHEN & POKOTILOV, LTD.

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CERTIFICATE OF MAILING

I hereby certify that the foregoing RESPONSE UNDER 37 CFR 1.111 AND 1.116 re Application Serial No. 09/778,325 is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: The Honorable Commissioner for Patents, Washington, D.C. on this 3rd day of April, 2003.


Martin L. Faigus